IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:

Lawrence Von Klleeck

Art Unit: **2129**

Application No.: 10/710,008

Examiner: **Benjamin J. Buss**

Filed: 06/11/2004

Title: **Second Opinion Selection System**

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APPEAL BRIEF

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Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

This is an Appeal Brief under 37 C.F.R. § 41/37 in connection with the decision of the Examiner mailed on January 8, 2008, setting a three month period for response to expire on April 8, 2008, absent an extension. A Petition for Unintentional Abandonment and a Notice of Appeal were filed on October 3, 2008 and was granted on November 10, 2008, setting the period for filing an Appeal Brief to expire on January 12, 2009, absent an extension.

This appeal Brief fully complies with all provisions of 37 CFR 41.37(c) and each of the topics required by § 41.37 is presented herewith and is labeled appropriately. It is not believed that any additional fees are due.

(1) Real Party In Interest

The real party in interest is David Lawrence Von Klleeck

(2) Related Appeals and Interferences

There are no other appeals or interferences related to this case.

(3) Status of Claims

Claims 42-53 are pending and all have been rejected.

Claims 1-41 have been canceled.

No claims have been allowed.

No claims have been withdrawn.

Claims 42-53 are hereby appealed.

(4) Status of Amendments

There are no amendments after final rejection.

(5) Summary of Claimed Subject Matter

Independent claim 42 proposes a system for hiring an employee comprising: inputting data, having a Model identification step review said data and output results; having a Model parameter estimation step review said output results; and outputting final results where said model identification step comprises identifying by decision nodes and uses artificial neural networks to review said data, where said model parameter estimation step uses machine learning to review said output results and where said results have two states. (Application 47-48, Figure 2).

Independent claim 50 proposes a system for hiring an employee comprising: inputting data, having a Model identification step review said data and output results; having a Model parameter estimation step review said output results; and outputting final results where said model identification step comprises identifying by decision nodes and uses fuzzy inference systems to review said data, where said model parameter estimation step uses machine learning to review said output results and where said results have two states. (Application 47-50, Figure 2).

The current invention, which is a second opinion selection system (SOSS) is a system that would generate a second opinion of the candidates to classify them as red or green. It is based on a different and more advanced set of scoring algorithms. These algorithms incorporate a field of artificial intelligence known as machine learning to more closely tailor the scoring process. Thus

the calibrated SOSS would be based on a company's "way of developing agents and doing business". It would incorporate "Company"s Intelligence" into the automated portion of their prospective agent selection process. In the preferred embodiment, the SOSS 1 is a done in three layers: 1. Preparation of data, 2. Inter Data Reduction Layer and 3. Fuzzy-inference layer. (Application 47-48, Figure 2)

(6) Grounds of Rejection to be Reviewed on Appeal

a) Claims 42-44 and 50-52 stand rejected under 335 U.S.C. 103(a) as being unpatentable over U.S. Patent Application No. 2004/0054553 (hereinafter Neuneier) and U.S. Patent Application No. 2004/0054553 (hereinafter Zizzania) in view of U.S. Patent No. 6,004,257 (hereinafter Tewari).

b) Claims 45 and 53 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Neuneier in view of hereinafter Zizzania and Tewari in view of U.S. Patent Application No. 2002/0029153 (hereinafter Mascarenhas).

c) Claims 46-47 and 49 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Neuneier in view of Mascarenhas.

d) Claims 48 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Neuneier in view of Mascarenhas in view of Zizzania.

e)

(7) Argument

The Rejection of Claims 42-44 and 50-52 under 335 U.S.C. 103(a) as being unpatentable over Neuneier and Zizzania in view of Tewari

Claims 42-44 and 50-52 stand rejected as obvious over Neuneier and Zizzania in view of Tewari under 35 U.S.C 103(a).

The proposed modification of over Neuneier in view of Tewari lacks one or more limitations recited in each of independent claims 42 and 50, and there is inadequate articulated reasoning with rational underpinning to support the Examiner's legal conclusion of obviousness.

The proposed modification of Neuneier and Zizzania in view of Tewari lacks one or more limitations recited in each of independent claims 42 and 50 in at least the following respects.

- As acknowledged by the examiner, Neuneier fails to teach the limitation further including the system being for hiring an employee which is the basis for the Applicant's invention. The combining of Tewari to rejection these claims are wrong since Tewari deals with a method for diagnosing and staging prostate cancer.

- Applicant also respectively argues that Zizzzamia is not proper prior art as it is contemporary with the application and that the data and its usage is different in Zizzzamia than in the application.

- Applicant also respectively argues that Tewari is not proper prior art as it is contemporary with the application and that the fields and its usage are different.

> Often, it will be necessary for a court to look to interrelated teachings of multiple patents; the effects of demands known to the design community or present in the marketplace; and the background knowledge possessed by a person having ordinary skill in the art, all in order to determine whether there was an apparent reason to combine the known elements in the fashion claimed by the patent at issue. To facilitate review, this analysis should be made explicit. See In re Kahn, 441 F.3d 977, 988 (C.A.Fed.2006)("[R]ejections on obviousness grounds cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness"). As our precedents make clear, however, the analysis need not seek out precise teaching directed to the specific subject matter of the challenged claim, for a court can take account of the inferences and creative steps that a person of ordinary skill in the art would employ.

KSR Int'l v. Teleflex Inc., 127 S.Ct. 1727 at 1740-41 (2007). The Examiner's reasoningt is conclusory in that it begins with the claim limitation and from that infers a generic benefit in hindsight. This is not a rational underpinning that shows a connection by articulated reasoning of what those of ordinary skill knew, leading to the claim limitation at issue.

Consequently, Neuneier, Zizzania and Tewari, separately or in combination with one another, do not recite the required combination of limitations of independent claims 42 and 50. Because the cited references, either alone or in combination, do not teach the limitations of

independent claims 42 and 50, the examiner has failed to establish the required *prima facie* case of unpatentability. See In re Royka, 490 F.2d 981, 985 (CCPA 1974) (holding that a *prima facie* case of obviousness requires the references to teach all of the limitations of the rejected claim); see also MPEP § 2143.03. Similarly, the examiner has failed to establish a *prima facie* case of unpatentability for claims 41-44, depending on claim 42, and claims 51 and 52, depending on claim 50, and which recite further specific elements that have no reasonable correspondence to Neuneier, Zizzania and/or Tewari.

The Rejection of claims 45 and 53 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Neuneier in view of Zizzania and Tewari in view of Mascarenhas is Improper

Claims 45 and 53 stand rejected as obvious over over Neuneier in view of Zizzania and Tewari in view of Mascarenhas under 35 U.S.C 103(a).

The proposed modification of Neuneier in view of Zizzania and Tewari in view of Mascarenhas lacks one or more limitations recited in each of claims 45 and 53, and there is inadequate articulated reasoning with rational underpinning to support the Examiner's legal conclusion of obviousness.

The proposed modification of Neuneier in view of Zizzania and Tewari in view of Mascarenhas lacks one or more limitations recited in each of claims 45 and 53 in at least the following respects.

- As acknowledged by the examiner, Neuneier fails to teach the limitation further including the system being for hiring an employee which is the basis for the Applicant's invention. The combining of Tewari to rejection these claims are wrong since Tewari deals with a method for diagnosing and staging prostate cancer.

- As acknowledged by the examiner, Neuneier and Tewari fails to teach where the data is personality data.

- Applicant also respectively argues that the combining of Nueneier and Zizzzamia and Tewari in view of Mascarenhas is a combination of four different references from different fields of and is an overly burdensome Section 103 (a) rejection of Claims 45 and 53 given the large number of references and their different areas of art. These references would not have been combined by someone skilled in the arts.

- Applicant also respectively argues that Zizzzamia is not proper prior art as it is contemporary with the application and that the data and its usage is different in Zizzzamia than in the application.

The Examiner's reasoning in rejecting independent claims 45 and 53 appears to be that, since all the reference involves the same field of endeavor, data processing it would have been obvious to someone skilled in the art. This is an especially over broad conclusion and statement. It would be like linking in all areas of art that use paper or wood or metal no matter how these materials are used given today's state of the world.

> Often, it will be necessary for a court to look to interrelated teachings of multiple patents; the effects of demands known to the design community or present in the marketplace; and the background knowledge possessed by a person having ordinary skill in the art, all in order to determine whether there was an apparent reason to combine the known elements in the fashion claimed by the patent at issue. To facilitate review, this analysis should be made explicit. See In re Kahn, 441 F.3d 977, 988 (C.A.Fed.2006)("[R]ejections on obviousness grounds cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness"). As our precedents make clear, however, the analysis need not seek out precise teaching directed to the specific subject matter of the challenged claim, for a court can take account of the inferences and creative steps that a person of ordinary skill in the art would employ.

KSR Int'l v. Teleflex Inc., 127 S.Ct. 1727 at 1740-41 (2007). The Examiner's reasoning is conclusory in that it begins with the claim limitation and from that infers a generic benefit in hindsight. This is not a rational underpinning that shows a connection by articulated reasoning of what those of ordinary skill knew, leading to the claim limitation at issue.

Consequently, Neuneier, Zizzania, Mascarenhas and Tewari, separately or in combination with one another, do not recite the required combination of limitations of independent claims 45 and 53. Because the cited references, either alone or in combination, , the examiner has failed to establish the required *prima facie* case of unpatentability. See In re Royka, 490 F.2d 981, 985 (CCPA 1974) (holding that a *prima facie* case of obviousness requires the references to teach all of the limitations of the rejected claim); see also MPEP § 2143.03. Similarly, the examiner has failed to establish a *prima facie* case of unpatentability for claim 45, depending on claim 42, and claim 53, depending on claim 50, and which recite further specific elements that have no reasonable correspondence to Neuneier, Zizzania, Mascarenhas and/or Tewari,

The Rejection of Claims 46-47 and 49 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Neuneier in view of Mascarenhas is Improper

Regarding claims 46-47 and 49 depending on independent claim 42, as noted above, Neuneier and Mascarenhas fail to disclose or even suggest the required combination of limitations of claims 46-47 and 49, and lacks one or more limitations recited in claims 46-47 and 49 depend in at least the following respects.

- As acknowledged by the examiner, Neuneier fails to teach the limitation further including the system being for hiring an employee which is the basis for the Applicant's invention. The combining of Mascarenhas to rejection these claims are wrong since Mascarenhas deals with a using psychological significance pattern information for matching with target information which also does not address the hiring of an employee.

Consequently, the claimed combinations recited in claims 46-47 and 49 are not taught or suggested by Neuneier or Mascarenhas either separately or in combination with one another. Because the cited references, either alone or in combination, do not teach the limitations of

independent claims 46-47 and 49, the examiner has failed to establish the required *prima facie* case of unpatentability. See In re Royka, 490 F.2d 981, 985 (CCPA 1974) (holding that a *prima facie* case of obviousness requires the references to teach all of the limitations of the rejected claim); see also MPEP § 2143.03. Similarly, the examiner has failed to establish a *prima facie* case of unpatentability for claims 46-47 and 49 depending on claim 42 which recite further specific elements that have no reasonable correspondence to Neuneier or Mascarenhas.

The Rejection of Claims 48 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Neuneier in view of Mascarenhas in view of Zizzania is Improper

Regarding claim 48 depending on independent claim 42, as noted above, Neuneier, Ziaania and Mascarenhas fail to disclose or even suggest the required combination of limitations of claim 48 in at least the following respects.

- As acknowledged by the examiner, Neuneier fails to teach the limitation further including the system being for hiring an employee which is the basis for the Applicant's invention. The combining of Mascarenhas to rejection these claims are wrong since Mascarenhas deals with a using psychological significance pattern information for matching with target information which also does not address the hiring of an employee.

- Neuneier, and Mascarenhas fails to teach limitation where the data is biographical data. The combination of Ziaania which teaches a portable data processing terminal for use in a radio frequency communications network is not proper as it does not relate to the field of the invention.

- Applicant also respectively argues that Zizzzamia is not proper prior art as it is contemporary with the application and that the data and its usage is different in Zizzzamia than in the application.

Consequently, the claimed combinations recited in claim 48 are not taught or suggested by Neuneier, Ziaania and Mascarenhas either separately or in combination with one another.

Because the cited references, either alone or in combination, do not teach the limitations of independent claim 48, the examiner has failed to establish the required *prima facie* case of unpatentability. See In re Royka, 490 F.2d 981, 985 (CCPA 1974) (holding that a *prima facie* case of obviousness requires the references to teach all of the limitations of the rejected claim); see also MPEP § 2143.03. Similarly, the examiner has failed to establish a *prima facie* case of unpatentability for claim 48 depending on claim 42 which recite further specific elements that have no reasonable correspondence to Neuneier, Ziaania and/or Mascarenhas.

(8) Conclusion

For at least the reasons given above, the rejection of claims 42-53 is improper. Applicants respectfully request the final rejection by the Examiner be reversed and claims 42-53 be allowed.

Respectfully submitted,

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(9) Claims Appendix

1. A system for hiring an employee comprising: a) inputing data, a) having a Model identification step review said data and output results; b) having a Model parameter estimation step review said output results; and d) outputting final results.

2. A system according to claim 1 where said model identification step comprises identifying by decision nodes.

3. A system according to claim 1 where said model identification step uses artificial neural networks to review said data.

4. A system according to claim 1 where said model identification step uses fuzzy inference systems to review said data.

5. A system according to claim 1 where said model parameter estimation step uses machine learning to review said output results.

6. A system according to claim 4 where said fuzzy inference systems uses one or more of the following set of artificial neural networks to review said data; Self Organizing Map, Naive Bayesian Classifier, Learning Vector Quantization, Probabilistic Neural Network and Neural Genetic Optimizer.

7. A system according to claim 4 where said fuzzy inference systems to review said data first

uses Self Organizing Map, then uses Naive Bayesian Classifier, then uses Learning Vector Quantization, then uses Probabilistic Neural Network and then uses Neural Genetic Optimizer.

8. A system according to claim 1 where said model parameter estimation step uses one or more of the following set of artificial neural networks to review said output results Kohonen Learning, Bayesian Learning, Widrow-Huff Learning, Back propagation Learning and Generic Algorithms.

9. A system according to claim 1 where said results have two states.

10. A system according to claim 9 where said states are hire and do not hire.

11. A system according to claim 1 where said results have three states.

12. A system according to claim 11 where said states are no not move forward, move forward with caution and move forward.

13. A system according to claim 1 where said data is biographical data.

14. A system according to claim 1 where said data is personality data.

15. A system according to claim 11 where the system re-reviews the results from the processing and reviews the results from the middle state and places it in one of the other two states.

16. A system for offering a second opinion to re-score data: a) inputing data, a) having a Model identification step review said data and output results; b) having a Model parameter estimation step review said output results; and d) outputting final results.

17. A system according to claim 16 where said model identification step comprises identifying by decision nodes.

18. A system according to claim 16 where said model identification step uses artificial neural networks to review said data.

19. A system according to claim 16 where said model identification step uses fuzzy inference systems to review said data.

20. A system according to claim 18 where said fuzzy inference systems uses one or more of the following set of artificial neural networks to review said data; Self Organizing Map, Naive Bayesian Classifier, Learning Vector Quantization, Probabilistic Neural Network and Neural Genetic Optimizer.

21. A system for hiring an employee comprising: inputting data, having a Model identification step review said data and output results; having a Model parameter estimation step review said output results; and outputting final results where said model identification step comprises identifying by decision nodes and uses artificial neural networks to review said data, where said model parameter estimation step uses machine learning to review said output results and where

said results have two states.

22. A system according to claim 21 where said states are hire and do not hire.

23. A system according to claim 21 where said data is biographical data.

24. A system according to claim 21 where said data is personality data.

25. A system for hiring an employee comprising: inputting data, having a Model identification step review said data and output results; having a Model parameter estimation step review said output results; and outputting final results where said model identification step comprises identifying by decision nodes and uses artificial neural networks to review said data, where said model parameter estimation step uses machine learning to review said output results and where said results have three states.

26. A system according to claim 25 where said states are no not move forward, move forward with caution and move forward.

27. A system according to claim 25 where said data is biographical data.

28. A system according to claim 25 where said data is personality data.

29. A system for hiring an employee comprising: inputting data, having a Model identification step review said data and output results; having a Model parameter estimation step review said output results; and outputting final results where said model identification step comprises identifying by decision nodes and uses fuzzy inference systems to review said data, where said model parameter estimation step uses machine learning to review said output results and where said results have two states.

30. A system according to claim 21 where said states are hire and do not hire.

31. A system according to claim 21 where said data is biographical data.

32. A system according to claim 21 where said data is personality data.

33. A system for hiring an employee comprising: inputting data of potential hires, having a Model identification step review said data and output results; having a Model parameter estimation step review said output results; and outputting final results where said model identification step comprises identifying by decision nodes and uses artificial neural networks to review said data, where said model parameter estimation step uses machine learning to review said output results and decide whether to hire or not hire a potential employee.

34. A system according to claim 33 where said data is biographical data.

35. A system according to claim 33 where said data is personality data.

36. A system for hiring an employee comprising: inputting data of potential hires, having a Model identification step review said data and output results; having a Model parameter estimation step review said output results; and outputting final results where said model identification step comprises identifying by decision nodes and uses artificial neural networks to review said data, where said model parameter estimation step uses machine learning to review said output results and where said results are hire, hire with caution and do not hire.

37. A system according to claim 36 where said data is biographical data.

38. A system according to claim 36 where said data is personality data.

39. A system for hiring an employee comprising: inputting data of potential employees, having a Model identification step review said data and output results; having a Model parameter estimation step review said output results; and outputting final results where said model identification step comprises identifying by decision nodes and uses fuzzy inference systems to review said data, where said model parameter estimation step uses machine learning to review said output results which are hire and do not hire.

40. A system according to claim 39 where said data is biographical data.

41. A system according to claim 39 where said data is personality data.

42. A system for hiring an employee comprising: inputting data, having a Model identification step review said data and output results; having a Model parameter estimation step review said output results; and outputting final results where said model identification step comprises identifying by decision nodes and uses artificial neural networks to review said data, where said model parameter estimation step uses machine learning to review said output results and where said results have two states.

43. A system according to claim 42 where said states are hire and do not hire.

44. A system according to claim 42 where said data is biographical data.

45. A system according to claim 42 where said data is personality data.

46. A system for hiring an employee comprising: inputting data, having a Model identification step review said data and output results; having a Model parameter estimation step review said output results; and outputting final results where said model identification step comprises identifying by decision nodes and uses artificial neural networks to review said data, where said model parameter estimation step uses machine learning to review said output results and where said results have three states.

47. A system according to claim 46 where said states are no not move forward, move forward with caution and move forward.

48. A system according to claim 46 where said data is biographical data.

49. A system according to claim 46 where said data is personality data.

50. A system for hiring an employee comprising: inputting data, having a Model identification step review said data and output results; having a Model parameter estimation step review said output results; and outputting final results where said model identification step comprises identifying by decision nodes and uses fuzzy inference systems to review said data, where said model parameter estimation step uses machine learning to review said output results and where said results have two states.

51. A system according to claim 50 where said states are hire and do not hire.

52. A system according to claim 50 where said data is biographical data.

53. A system according to claim 50 where said data is personality data.

(10) Evidence Appendix

There is no evidence submitted pursuant to 37 C.F.R. §§ 1.130, 1.131, 1.132 and no other evidence entered by the examiner and relied on by the appellant in the appeal.

(11) Related Proceedings Appendix

There are no other decisions rendered by a court or the Board in any other appeals or interferences related to this case.